

STATINTL

Approved For Release 2002/10/31 : CIA-RDP75-00793R000200170008-2

THE WHITE HOUSE

WASHINGTON

July 13, 1973

OGC SUBJXXXXXXXXXX
SECURITY EO11652
CLASS & DECLASS

Ogc 73-13/4

MEMORANDUM FOR: MEMBERS OF THE INTERAGENCY
CLASSIFICATION REVIEW COMMITTEE

FROM: ADRIENNE THOMAS *Ad*

SUBJECT: LEGAL QUESTIONS CONCERNING
FOREIGN CLASSIFIED MATERIAL

Enclosed you will find a copy of the letter sent to the Justice Department concerning the relationship of Executive Order 11652 to foreign classified material.

As was reported at the ICRC meeting on July 11, the Working Group on foreign classified material felt that certain legal questions had to be answered before they could proceed with their work.

State Dept. review completed. Referral to NSC not required.

THE WHITE HOUSE

WASHINGTON

July 12, 1973

Dear Mr. Dixon:

As you know, the Interagency Classification Review Committee established a subcommittee to make recommendations on procedures for the classification and declassification of foreign classified information received by the United States Government. I have been advised by this subcommittee that in order to proceed further with its study in this area, several issues of legal interpretation must be resolved.

The purpose of this letter is to pose those questions for your consideration. It would be very much appreciated if you could arrange to have them reviewed and furnish me with the opinion of the Office of Legal Counsel on these matters.

The questions posed for your consideration are as follows:

1. Does Section 552 (a) (3) of Title 5 of the United States Code (the Freedom of Information Act) which provides that "Each agency, on request for identifiable records . . . , shall make the records promptly available to any person" apply to (A) records received from a foreign government by the United States Government, or (B) records originated by the United States Government, but containing information derived from a foreign official or foreign document? Although "records" is not defined in the Freedom of Information Act, we refer to the definition of records in 44 U.S.C., Section 3301, and to *Nichols v. United States*, 325 F. Sup. 130 (D. Kan. 1971), affirmed 460 F. 2d 671 (10th Cir. 1972).

2. Under Section 552 (b) of Title 5 of the United States Code which sets forth certain exceptions to sub-section (a) (3), does an agency have authority to withhold from public release foreign classified information received

by the United States Government? Particular reference is made to the first exemption of the Freedom of Information Act and Section 4 (C) of Executive Order 11652.

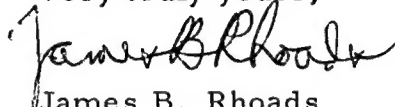
3. In the absence of an executive agreement or treaty by the United States with a foreign government, does the head of an agency or department of the United States Government have authority pursuant to Executive Order 11652 to declassify, without the prior consent of the originating foreign government, classified information or records received from that government in confidence and in the custody of the United States Government? Particular reference is made to Section 5 (B) (1) of Executive Order 11652.

4. Does the head of an agency or department of the United States Government have authority pursuant to Executive Order 11652 to declassify, without the prior consent of the originating foreign government, classified information received from that government by the United States if there is in existence an executive agreement between that government and the United States in the form attached. Further, what is the force and effect of such agreement, if it was adopted prior to the effective date of Executive Order 11652?

5. Do Sections 5 (A) and 5 (B) of Executive Order 11652 oblige the head of a department or agency to apply the requirements of these provisions to foreign classified information or material coming into his possession after the effective date of the Executive Order: March 8, 1972?

Your assistance in preparing the legal opinion of the Justice Department on these matters is greatly appreciated. Should you have any questions, please contact Dr. James E. O'Neill (IDS Code 13-33408).

Very truly yours,



James B. Rhoads
Acting Chairman
Interagency Classification
Review Committee

Honorable Robert G. Dixon
Assistant Attorney General
Office of Legal Counsel
Department of Justice
Washington, D.C. 20530

cc: Members of the Interagency Classification
Review Committee

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TREATIES AND OTHER INTERNATIONAL ACTS SERIES 6836

SAFEGUARDING OF CLASSIFIED INFORMATION

**Agreement Between the
UNITED STATES OF AMERICA
and NORWAY**

**Effected by Exchange of Notes
Signed at Oslo February 26, 1970**



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89-497, approved July 8, 1966 (80 Stat. 271; 1 U.S.C. 113)—

"... the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence ... of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof."

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NORWAY

Safeguarding of Classified Information

*Agreement effected by exchange of notes
Signed at Oslo February 26, 1970;
Entered into force February 26, 1970.*

*The American Ambassador to the Minister for Foreign Affairs
of Norway*

OSLO, February 26, 1970

EXCELLENCY:

I have the honor to refer to recent discussions between representatives of our respective Governments concerning the desirability of extending to all classified information exchanged between our two Governments the same principles that our Governments have agreed to apply in safeguarding classified information covered by the Security Agreement by the Parties to the North Atlantic Treaty, approved by the North Atlantic Council on January 6, 1950, and the Basic Principles and Minimum Standards of Security (NATO Document C-M(55)15 (Final)), approved by the Council on March 2, 1955.

I have the honor to propose, therefore, that all classified information communicated directly or indirectly between our two Governments be protected in accordance with such principles; namely that the recipient:

- a. will not release the information to a third government without the approval of the releasing Government;
- b. will undertake to afford the information substantially the same degree of protection afforded it by the releasing Government;
- c. will not use the information for other than the purpose for which it was given; and
- d. will respect private rights, such as patents, copyrights, or trade secrets which are involved in the information.

For the purposes of this agreement, information is understood in its broadest sense to include, among other things, any document, writ-

ing, sketch, photograph, plan, model, specification, design, or prototype, whether communicated by oral, visual, or written means or by transfer of equipment or materials.

These principles will apply in the case of the Government of the United States to information designated by the Government of the United States as "Confidential," "Secret" or "Top Secret" and to information designated by your Government as coming within the purview of this agreement. This agreement will not, however, apply to information for which special agreements may be required, such as classified atomic energy information.

This understanding will apply to all exchanges of such information between all agencies and authorized officials of our two Governments, whether at the respective capitals of our two countries, at international conferences or elsewhere. Any other arrangements between our two Governments or their respective agencies relating to the exchange of such information will, to the extent that they are not inconsistent with these principles, not be affected by this understanding. Details regarding channels of communication and the application of the foregoing principles will be the subject of such technical arrangements as may be necessary between appropriate agencies of our respective Governments.

Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified information furnished to it by the other Government, and will assist such experts in determining whether classified information provided by their Government to the other Government is being adequately protected.

In recognition of the fact that protection of the classified information exchanged hereunder, particularly in the field of research on and development and production of defense material, is essential to the national safety of both our countries, general procedures for safeguarding the information will be as set forth in the Annex hereto.

If the foregoing is agreeable to your Government, I propose that this note and your reply to that effect, designating the types of information your Government wishes covered, shall constitute an agreement on this matter effective the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration.

PHILIP K. CROWE

Philip K. Crowe
American Ambassador

His Excellency
JOHN LYNG,
*Minister for Foreign Affairs,
Oslo.*

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Annex of General Security Procedures

1. Official information given a security classification by either of our two Governments or by agreement of our two Governments and furnished by either Government to the other through Government channels will be assigned a classification by appropriate authorities of the receiving Government which will assure a degree of protection equivalent to or greater than that required by the Government furnishing the information.

2. The recipient Government will not use such information for other than the purposes for which it was furnished and will not disclose such information to a third Government without the prior consent of the Government which furnished the information.

3. With respect to such information furnished in connection with contracts made by either Government, its agencies, or private entities or individuals within its territory with the other Government, its agencies, or private entities or individuals within its territory, the Government of the country in which performance under the contract is taking place will assume responsibility for administering security measures for the protection of such classified information in accordance with standards and requirements which are administered by that Government in the case of contractual arrangements involving information it originates of the same security classification. Prior to the release of any such information which is classified CONFIDENTIAL or higher to any contractor or prospective contractor, the Government considering release of the information will undertake to insure that such contractor or prospective contractor and his facility have the capability to protect the classified information adequately, will grant an appropriate facility clearance to this effect, and will undertake, in accordance with national practice, to grant appropriate security clearances for all personnel whose duties require access to the classified information.

4. The recipient Government will also:

a. Insure that all persons having access to such classified information are informed of their responsibilities to protect the information in accordance with applicable laws.

b. Carry out security inspections of facilities within its territory which are engaged in contracts involving such classified information.

c. Assure that access to such classified information at facilities described in subparagraph b is limited to those persons who require it for official purposes. In this connection, a request for

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authorization to visit such a facility when access to the classified information is involved will be submitted to the appropriate department or agency of the Government where the facility is located by an agency designated for this purpose by the other Government, and the request will include a statement of the security clearance and official status of the visitor and of the necessity for the visit. Blanket authorizations for visits over extended periods may be arranged. The Government to which the request is submitted will be responsible for advising the contractor of the proposed visit and for authorizing the visit to be made.

5. Costs incurred in conducting security investigations or inspections required hereunder will not be subject to reimbursement.

6. Classified information and material will be transferred only on a government-to-government basis.

7. The Government which is the recipient of material produced under contract in the territory of the other Government undertakes to protect classified information contained therein in the same manner as it protects its own classified information.

*The Minister for Foreign Affairs of Norway to the
American Ambassador*

MINISTÈRE ROYAL DES AFFAIRES ÉTRANGÈRES
LE MINISTRE

OSLO, 26th February, 1970.

EXCELLENCY,

I have the honour to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"EXCELLENCY:

I have the honor to refer to recent discussions between representatives of our respective Governments concerning the desirability of extending to all classified information exchanged between our two Governments the same principles that our Governments have agreed to apply in safeguarding classified information covered by the Security Agreement by the Parties to the North Atlantic Treaty, approved by the North Atlantic Council on January 6, 1950, and the Basic Principles and Minimum

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Standards of Security (NATO Document C-M(55)15 (Final)), approved by the Council on March 2, 1955.

I have the honor to propose, therefore, that all classified information communicated directly or indirectly between our two Governments be protected in accordance with such principles; namely that the recipient:

- a. will not release the information to a third government without the approval of the releasing Government;
- b. will undertake to afford the information substantially the same degree of protection afforded it by the releasing Government;
- c. will not use the information for other than the purpose for which it was given; and
- d. will respect private rights, such as patents, copyrights, or trade secrets which are involved in the information.

For the purposes of this agreement, information is understood in its broadest sense to include, among other things, any document, writing, sketch, photograph, plan, model specification, design, or prototype, whether communicated by oral, visual, or written means or by transfer of equipment or materials.

These principles will apply in the case of the Government of the United States to information designated by the Government of the United States as "Confidential", "Secret" or "Top Secret" and to information designated by your Government as coming within the purview of this agreement. This agreement will not, however, apply to information for which special agreements may be required, such as classified atomic energy information.

This understanding will apply to all exchanges of such information between all agencies and authorized officials of our two Governments, whether at the respective capitals of our two countries, at international conferences or elsewhere. Any other arrangements between our two Governments or their respective agencies relating to the exchange of such information will, to the extent that they are not inconsistent with these principles, not be affected by this understanding. Details regarding channels of communication and the application of the foregoing principles will be the subject of such technical arrangements as may be necessary between appropriate agencies of our respective Governments.

Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is

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mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified information furnished to it by the other Government, and will assist such experts in determining whether classified information provided by their Government to the other Government is being adequately protected.

In recognition of the fact that protection of the classified information exchanged hereunder, particularly in the field of research on and development and production of defense material, is essential to the national safety of both our countries, general procedures for safeguarding the information will be as set forth in the Annex hereto.

If the foregoing is agreeable to your Government, I propose that this note and your reply to that effect, designating the types of information your Government wishes covered, shall constitute an agreement on this matter effective the date of your reply.

Accept, Excellency, the renewed assurances of my highest consideration.

Annex of General Security Procedures

1. Official information given a security classification by either of our two Governments or by agreement of our two Governments and furnished by either Government to the other through Government channels will be assigned a classification by appropriate authorities of the receiving Government which will assure a degree of protection equivalent to or greater than that required by the Government furnishing the information.

2. The recipient Government will not use such information for other than the purposes for which it was furnished and will not disclose such information to a third Government without the prior consent of the Government which furnished the information.

3. With respect to such information furnished in connection with contracts made by either Government, its agencies, or private entities or individuals within its territory with the other Government, its agencies, or private entities or individuals within its territory, the Government of the country in which performance under the contract is taking place will assume responsibility for administering security measures for the protection of such classified information in accordance with standards and requirements which are administered by that Government in the case of contractual arrangements involving information it originates of the

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same security classification. Prior to the release of any such information which is classified CONFIDENTIAL or higher to any contractor or prospective contractor, the Government considering release of the information will undertake to insure that such contractor or prospective contractor and his facility have the capability to protect the classified information adequately, will grant an appropriate facility clearance to this effect, and will undertake, in accordance with national practice, to grant appropriate security clearances for all personnel whose duties require access to the classified information.

4. The recipient Government will also:

a. Insure that all persons having access to such classified information are informed of their responsibilities to protect the information in accordance with applicable laws.

b. Carry out security inspections of facilities within its territory which are engaged in contracts involving such classified information.

c. Assure that access to such classified information at facilities described in subparagraph b is limited to those persons who require it for official purposes. In this connection, a request for authorization to visit such a facility when access to the classified information is involved will be submitted to the appropriate department or agency of the Government where the facility is located by an agency designated for this purpose by the other Government, and the request will include a statement of the security clearance and official status of the visitor and of the necessity for the visit. Blanket authorizations for visits over extended periods may be arranged. The Government to which the request is submitted will be responsible for advising the contractor of the proposed visit and for authorizing the visit to be made.

5. Costs incurred in conducting security investigations or inspections required hereunder will not be subject to reimbursement.

6. Classified information and material will be transferred only on a government-to-government basis.

7. The Government which is the recipient of material produced under contract in the territory of the other Government undertakes to protect classified information contained therein in the same manner as it protects its own classified information".

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In reply, I have the honour to inform Your Excellency that this proposal is acceptable to the Government of Norway. Furthermore, the Government of Norway agrees that Your Excellency's Note including the Annex of General Security Procedures and this reply shall constitute an agreement between our two Governments on this matter, effective today's date.

The principles for the protection of classified information as set forth in this agreement shall in the case of the Government of Norway apply to information designated by the Government of Norway either as "Confidential", "Secret" or "Top Secret", or, in the corresponding Norwegian terms, as "Fortrolig", "Hemmelig" or "Strengt Hemmelig". Security measures in Norway with respect to these designations will be applied in accordance with corresponding NATO security measures unless wider measures have been agreed to.

Accept, Excellency, the renewed assurances of my highest consideration.

JOHN LYNG

His Excellency
PHILIP K. CROWE,
*Ambassador of the
United States of America,
Oslo.*

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